IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 454 OF 2006

Dayaram Parashram Hud vs. Kamlabai Wasudeorao Khapre & Anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
OCTOBER 30, 2007.

Heard Shri Patil, learned counsel for the appellant. He relies upon the judgment of this Court in the case of Jagdishsingh vs. Feku Jamnaprasad reported at 1997 (2) Mh.L.J. 128, to contend that when plaintiff files a suit for declaration and injunction without claiming possession, the suit is barred under Section 42 of the Specific Relief Act.

I have perused the judgment of the trial Court as also appellate Court with his assistance. The trial Court as well as appellate Court have nowhere recorded that the present appellant – original defendant is in possession. The finding in para 11 of the appellate Court's judgment is that the evidence on the point is cogent, consistent and reliable and the suit

premises is in possession of plaintiff. The said finding is reiterated in paragraph 14 while considering the very same judgment.

The learned counsel has pointed out that the Court below has concluded that the title follows the possession and present appellant is a tress passer in possession. However, I find that those observations are made while considering the arguments advanced by the original defendant and by way of additional material. There is no express finding recorded by any Court that present defendant is in possession.

In these circumstances, no substantial question of law arises in the matter. Second Appeal is, therefore, dismissed. No order as to costs.

JUDGE

*GS.